

By: Stogner, Horhn

To: Agriculture

SENATE BILL NO. 2559

1 AN ACT TO CREATE AN ORGANIC CERTIFICATION PROGRAM TO BE  
2 DEVELOPED AND IMPLEMENTED BY THE DEPARTMENT OF AGRICULTURE AND  
3 COMMERCE FOR THE PURPOSE OF DISTINGUISHING AND REGULATING THE SALE  
4 OF ORGANIC FOOD; TO PROVIDE DEFINITIONS; TO REQUIRE PERSONS TO  
5 BECOME CERTIFIED BY THE DEPARTMENT BEFORE SELLING ORGANIC FOOD; TO  
6 PROVIDE CERTIFICATION REQUIREMENTS; TO REQUIRE CERTAIN INSPECTION  
7 AND RENEWAL FEES; TO PROVIDE PENALTIES FOR VIOLATIONS OF THIS ACT;  
8 TO PROVIDE HEARING PROCEDURES FOR PERSONS ACCUSED OF VIOLATING  
9 THIS ACT; AND FOR RELATED PURPOSES.

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

11 SECTION 1. For the purpose of this act, the following terms  
12 shall have the following meanings:

13 (a) "Agricultural product" means any agricultural  
14 commodity or product, whether raw or processed, including any  
15 commodity or product derived from livestock that is marketed for  
16 human or livestock consumption.

17 (b) "Certified organic farm" means a farm or portion of  
18 a farm or a site where agricultural products or livestock are  
19 produced, that is certified by the department as utilizing a  
20 system of organic farming.

21 (c) "Commissioner" means the Commissioner of the  
22 Mississippi Department of Agriculture and Commerce.

23 (d) "Department" means the Mississippi Department of  
24 Agriculture and Commerce.

25 (e) "EPA" means the United States Environmental  
26 Protection Agency.

27 (f) "Farm plan" means a plan of management of an  
28 organic farm that has been agreed to by the producer or handler  
29 and the department and that includes written plans concerning all

30 aspects of agricultural production or handling including all  
31 practices required under this act.

32 (g) "FDA" means the United States Food and Drug  
33 Administration.

34 (h) "Greenhouse unit" or "unit" means a structure  
35 intended or used for the production of agricultural products.

36 (i) "Handler" means any person engaged in the business  
37 of handling agricultural products, except such term shall not  
38 include final retailers of agricultural products that do not  
39 process agricultural products.

40 (j) "Livestock" means any cattle, sheep, goats, swine,  
41 poultry, equine animals used for food or in the production of  
42 food, fish or other seafood used for food, wild or domesticated  
43 game, or other nonplant life.

44 (k) "Mississippi organic materials and practices  
45 (MOMP)" means a list of approved and prohibited substances and  
46 practices as adopted.

47 (l) "Organic farming" means a food production system  
48 based on farm management methods or practices that rely on  
49 building soil fertility by utilizing crop rotation, recycling of  
50 organic wastes, application of unsynthesized minerals and, when  
51 necessary, mechanical, botanical or biological pest control.

52 (m) "Organic food" means a food which is labeled as  
53 organic or organically grown and which has been produced,  
54 transported, distributed, processed and packaged without the use  
55 of synthetic pesticides, synthetically compounded fertilizers,  
56 synthetic growth hormones, genetically modified organisms or  
57 artificial radiation and which has been verified by the department  
58 as complying with all provisions of this act.

59 (n) "Organically managed or produced" means an  
60 agricultural product that is produced and handled in accordance  
61 with all the provisions of this act and any regulations adopted  
62 thereunder.

63 (o) "Person" means an individual, group of individuals,  
64 corporation, association, organization, cooperative or other  
65 entity.

66 (p) "Pesticide" means any substance or mixture of

67 substances intended for preventing, destroying, repelling or  
68 mitigating any pest and any substance or combination of substances  
69 intended for use as a plant regulator, defoliant, desiccant or any  
70 substance the commissioner determines to be a pesticide.

71 (q) "Processing" means cooking, baking, heating,  
72 drying, mixing, grinding, churning, separating, extracting,  
73 cutting, fermenting, eviscerating, preserving, dehydrating,  
74 freezing or otherwise manufacturing and includes the packaging,  
75 canning, jarring or otherwise enclosing food in a container.

76 (r) "Producer" means a person who engages in the  
77 business of growing or producing food, feed, ornamental plants and  
78 livestock.

79 (s) "Prohibited substances, fertilizers, materials,  
80 pesticides" mean those substances, fertilizers, materials,  
81 pesticides or practices prohibited by this act or regulations from  
82 use in a certified organic farming operation.

83 (t) "Restricted" means substances and practices which  
84 use is limited or qualified by the commissioner.

85 (u) "Tolerance" means the amount of a pesticide  
86 permitted on raw or processed agricultural commodities.

87 SECTION 2. The department may adopt any rules and  
88 regulations necessary for the enforcement and administration of  
89 this act, including, but not limited to:

90 (a) Crop, livestock and dairy production standards;

91 (b) Manufacturing, processing, packaging and labeling  
92 standards;

93 (c) A materials list of permitted and prohibited  
94 substances;

95 (d) Procedures governing the certification process; and

96 (e) Standards and procedures for approving out-of-state  
97 organic products and ingredients.

98           SECTION 3. (1) Any producer who sells or intends to sell  
99 organic food shall apply to the department for certification in  
100 accordance with this act.

101           (2) An applicant for certification must document that the  
102 land, individual field or greenhouse units to be certified shall  
103 be managed organically. Documentation for certification shall be  
104 in the form of a detailed, three-year farm plan for land, fields  
105 or units and in a format acceptable to the department. The  
106 application shall be reviewed by the organic certification program  
107 director.

108           (3) The farm plan shall include:

109                 (a) Three-year rotation and nutrient-stabilization  
110 plans for each field or unit under organic management;

111                 (b) One-year, agronomic field-by-field crop practice  
112 and spray plans for each field or unit of the farm which is  
113 organically managed;

114                 (c) A map of the field to be organically managed which  
115 also indicates all buffer zones and their width, with at least a  
116 thirty-foot buffer zone separating land managed organically from  
117 other cultivated agricultural land and at least a fifteen-foot  
118 buffer zone separating greenhouse units managed organically from  
119 other units;

120                 (d) A description of facility and methods that shall be  
121 used to keep organically-managed crops and livestock from  
122 post-harvest segregated from nonorganically-managed crops and  
123 livestock;

124                 (e) A description of facilities and methods that will  
125 be used to keep farm equipment from contaminating  
126 organically-managed fields; and

127                 (f) A description of facilities and methods that shall  
128 be used to store and handle prohibited materials separately from  
129 permitted materials.

130           (4) A crop grown in an organically-managed field, any part

131 of which is located within thirty (30) feet of a field to which a  
132 prohibited pesticide has been applied, shall be tissue-tested for  
133 residues of that pesticide before the harvest of the organic crop.

134 (5) The department shall not certify a field as  
135 organically-managed that is part of a farm unless there exist  
136 distinct, defined boundaries between fields under organic  
137 management and other fields.

138 (6) The department shall not certify land that has no  
139 previous history as cultivated cropland, orchard or improved  
140 pasture, and that is being converted to organic for the sole  
141 purpose of replacing land abandoned because of chemical  
142 contamination or depleted fertility resulting from previous  
143 farm-management practices.

144 (7) In order to be certified, greenhouse units must be used  
145 solely for organically-produced agricultural products in  
146 compliance with this act and applicable regulations.

147 (8) An applicant for certification shall present soil  
148 fertility test results for each field or greenhouse unit to be  
149 certified initially and every third year thereafter.

150 (9) An applicant shall also present the results of water  
151 residue and plant-tissue tests as required by the department.

152 (10) The department shall reserve the right to use a  
153 certification rating system in evaluating the application.

154 SECTION 4. (1) Every precaution shall be taken to avoid  
155 pesticide or other contaminating residues on agricultural products  
156 sold or labeled as organic. In cases of unavoidable environmental  
157 contamination, residues shall not exceed the limits set by the  
158 department. For any substance not currently regulated by federal  
159 law, the department may set appropriate action levels.

160 (2) The department shall sample a percentage of organic raw  
161 agricultural commodities and organic processed food products as  
162 part of the state pesticide residue monitoring program. Results  
163 obtained from organic produce and organically processed product

164 samples shall be compiled in a separate annual report and  
165 submitted to the United States Department of Agriculture.

166 (3) If a pesticide residue or residue of another prohibited  
167 substance is found on an organic raw agricultural commodity or an  
168 organically processed product by a state pesticide residue  
169 monitoring program, the department may conduct an investigation of  
170 the appropriate handler, producer or processor.

171 (4) The department may conduct periodic residue testing of  
172 agricultural products sold as organic in the following situations:

173 (a) In cases of pesticide drift;

174 (b) When farm or handling facility inspection leads to  
175 suspicion of residue problems;

176 (c) Suspicion that the soil harbors contaminants;

177 (d) Suspicion that irrigation water or rainfall  
178 contains residues;

179 (e) During the thirty-six-month period immediately  
180 following treatment of a certified organic farm by a state or  
181 federal emergency spray program; or

182 (f) In response to complaints, or to follow up on  
183 positive residue testing results from federal, state, or local  
184 government testing.

185 SECTION 5. (1) The department may certify a crop as organic  
186 only if harvest occurs at least three (3) years after the most  
187 recent use of a prohibited pesticide and at least three (3) years  
188 after the most recent use of a prohibited fertilizer.

189 (2) Farmers, growers or producers may be certified as  
190 "transition to organic" within the three-year period required for  
191 being certified as organic pursuant to subsection (1) of the  
192 section. A "transition to organic" certification shall not exceed  
193 three (3) consecutive years for the same farm unit.

194        SECTION 6. If a certified farm, field or greenhouse unit is  
195 removed from organic management, it may be recertified after  
196 passage of three (3) years without the application of a prohibited  
197 pesticide and two (2) years without the application of a  
198 prohibited fertilizer or other prohibited material.

199        SECTION 7. (1) The following records shall be kept for each  
200 farm, field or other agricultural production unit for which  
201 application for certification is made:

202           (a) Copies of farm questionnaires devised by the  
203 department and completed by applicants for certification;

204           (b) Field-by-field or unit-by-unit fertilization,  
205 cropping and pest management histories;

206           (c) Records of all laboratory analyses performed for a  
207 farm, including soil tests, plant-tissue tests, forage tests,  
208 bacteria counts and residue tests for toxic contaminants in soil,  
209 water or crops for at least three (3) years and made available for  
210 review by the department;

211           (d) Records of all crops produced shall show by lot,  
212 bin or shipment numbers and dates which field a particular lot  
213 came from;

214           (e) A producer of both organic produce and nonorganic  
215 produce on the same farm shall keep separate records for each of  
216 these two (2) categories. The sales records shall include  
217 verification documents such as questionnaires, farm plans,  
218 affidavits, inspection reports, laboratory analyses and documents  
219 showing the path taken by an organic food product through  
220 post-harvest handling and distribution;

221           (f) Other documentation required to complete the  
222 application for certification or recertification as required under  
223 Section 3 of this act.

224        (2) The following records shall be kept for processors:

225           (a) The department-devised questionnaire covering all  
226 nonfarm aspects of food processing and manufacturing, if

227 applicable, to be prepared for each stage of the processing where  
228 a food is substantially changed from its previous state and  
229 covering every aspect of the product relevant to the department's  
230 certification standards; and

231 (b) Notarized affidavits and agreements declaring that  
232 the information they provide is accurate.

233 (3) (a) The department shall conduct a minimum of one (1)  
234 on-site inspection per year of every farm or processing facility  
235 for which a questionnaire is required; and

236 (b) These inspections shall be reported on a form  
237 signed by a department inspector that include the following  
238 information:

239 (i) Observations about the condition of the farm  
240 or processing facility;

241 (ii) Comments about the use of restricted or  
242 prohibited practices and materials; and

243 (iii) An optional certification rating of the  
244 operation.

245 (4) The department may conduct unannounced inspections of  
246 certified producers and certified processors.

247 SECTION 8. (1) The department may conduct or provide for  
248 audits of all documents used to verify that certified products  
249 meet organic standards.

250 (2) These audits shall include, where appropriate:

251 (a) An inventory audit, a listing of the formulations  
252 of the product, percent accuracy in labeling, the amount bought  
253 and sold per product and producer or destination and the number of  
254 vendors and amount of product per vendor; or

255 (b) A farm audit, listing the amounts sold per product,  
256 date and destination and the area and location planted of each  
257 product with dates of harvest.

258 (3) Information contained in audit records that is exempt  
259 under the Public Records Act of Mississippi shall remain

260 confidential. Such exempt confidential information shall include,  
261 but not be limited to:

262 (a) Information that, if released, would give advantage  
263 to competitors or bidders; and

264 (b) Trade secrets and commercial or financial  
265 information obtained from a person and privileged or confidential  
266 by statute or judicial decision.

267 SECTION 9. (1) Applications submitted under this act shall  
268 be in writing on a form prescribed by the department.

269 (2) A separate application shall be submitted for each farm,  
270 farm unit, processing plant, distribution facility or retail  
271 operation.

272 (3) Applications and verification documents shall be  
273 submitted to the Mississippi Department of Agriculture and  
274 Commerce.

275 (4) The department shall authorize retailers and  
276 distributors to use the Mississippi certified organic mark upon  
277 satisfactory completion and approval of a department application  
278 form.

279 (5) All applicants entitled to use the mark shall be subject  
280 to inspection by the department.

281 SECTION 10. (1) The following conditions apply generally to  
282 the retail sale of organic products:

283 (a) Any person selling organic products shall be  
284 certified by the department, shall renew certification annually  
285 and shall abide by the provisions of this act.

286 (b) A certified retailer may use the department  
287 approved mark to identify only certified organic or transition to  
288 organic food produced in Mississippi by a department certified  
289 producer.

290 (c) Products bearing a Mississippi organic or  
291 transitional organic mark shall be easily identifiable to  
292 consumers and shall be clearly distinguishable from similar

293 products that are not Mississippi certified or transitional  
294 organic.

295 (d) A certified retailer may sell or hold out for sale  
296 as organic those agricultural products that have been certified as  
297 organically produced by the official certifying agent for the  
298 state of origin.

299 (2) A retailer or distributor shall have in place physical  
300 facilities and management procedures adequate to prevent  
301 commingling of organic food or organic products with other  
302 nonorganic or contaminated food or products during distribution or  
303 stocking.

304 SECTION 11. (1) The department shall not certify drugs or  
305 drug ingredients under this act.

306 (2) No person may use a Mississippi certified organic mark  
307 in connection with, nor represent as Mississippi certified  
308 organic, any product or any ingredient of a product that is  
309 regulated as a drug or that has been determined by a state or  
310 federal agency of competent jurisdiction to be subject to  
311 regulation as a drug.

312 (3) No person may use a Mississippi certified organic mark  
313 or represent any product or ingredient as Mississippi certified  
314 organic in an advertisement including, but not limited to, a  
315 printed or broadcast advertisement, "advertorial," flier,  
316 point-of-purchase material, signage or other printed material,  
317 that makes medicinal claims.

318 SECTION 12. (1) The department shall perform inspections of  
319 certified producers, processors, retailers, distributors and  
320 applicants for certification at a time when normal production,  
321 post-harvest or sales activity can be observed.

322 (2) The department may issue a stop sale on products that  
323 falsely or erroneously claim to be organic. The stop sale may be  
324 lifted at such time as the seller can show:

325 (a) That the products were organically managed in

326 compliance with this act and regulations or that of the state of  
327 origin; or

328 (b) That he agrees to drop any claim that the products  
329 were organically produced.

330 (3) The department may conduct unannounced inspections in  
331 cases of suspected violations of standards.

332 (4) Any person with cause to believe that any provision of  
333 this act has been violated may file a written or oral complaint  
334 with the department setting forth the facts of the alleged  
335 violation.

336 (5) The department shall maintain for three (3) years  
337 records of all complaints, investigations, and remedial actions.  
338 These records shall become part of the reviewing record of any  
339 proceeding involving a certified person or applicant for  
340 certification.

341 SECTION 13. (1) Producers and processors participating in  
342 the department's organic certification program will be charged an  
343 inspection fee and an annual renewal fee. Retailers and  
344 distributors shall be charged an application fee for the initial  
345 inspection conducted by the department in accordance with this act  
346 and the regulations and an annual renewal fee.

347 (2) The inspection fee shall be paid by the new applicant  
348 and those applicants renewing certification, and shall be paid in  
349 accordance with the following schedule:

350	<b>Producer</b>	<b>Initial application</b>	<b>Renewal</b>
351	less than 5 acres	\$50.00	\$25.00
352	5 to 25 acres	\$75.00	\$50.00
353	over 25 acres	\$150.00	\$50.00 plus
354			2.50 per acre
355			of production
356	<b>Greenhouse Producer</b>	<b>Initial application</b>	<b>Renewal</b>
357	less than 250 sq. ft.	\$50.00	\$25.00
358	250 to 1,000 sq. ft.	\$75.00	\$50.00

359	over 1,000 sq. ft.	\$150.00	\$150.00
360	<b>Distributor</b>	<b>Initial application</b>	<b>Renewal</b>
361		\$150.00	\$150.00/year
362	<b>Processor</b> (other than	<b>Initial application</b>	<b>Renewal</b>
363	producer/processor)	\$500.00	\$500.00/year
364	<b>Retailer</b>	<b>Initial application</b>	<b>Renewal</b>
365		\$100.00	\$100.00

366 SECTION 14. (1) The labeling, advertising or otherwise  
367 representing of food to be organic by any producer, handler,  
368 distributor or retailer is prohibited, unless the food complies  
369 with this act and regulations.

370 (2) The selling or offering for sale of food as organic  
371 which does not comply with this act or regulations is prohibited.

372 (3) The buying, selling or offering for sale of any organic  
373 food by any handler, distributor or retailer in violation of this  
374 act or regulations is prohibited.

375 (4) The use, employment, adoption or utilization of the  
376 Mississippi certified organic mark in the selling, advertising,  
377 marketing, packaging or other commercial handling of food and  
378 fiber product without prior application to and approval by the  
379 department is prohibited.

380 SECTION 15. Any person who violates this act or any  
381 regulation is guilty of a misdemeanor, and shall be punished by  
382 the imposition of a fine not to exceed Five Hundred Dollars  
383 (\$500.00) or by imprisonment in the county jail for a term not to  
384 exceed six (6) months, or both.

385 SECTION 16. (1) If a person violates this act, or rules and  
386 regulations, administrative proceedings may be brought against the  
387 person by a written complaint filed with the department. The  
388 matter shall be heard by the organic certification program  
389 director or his designated representative in an informal meeting  
390 between the accused and the program director or his designee. If  
391 the program director or his designee finds that the accused did

392 commit a violation, the program director may levy a civil penalty  
393 against the accused in an amount as authorized by the regulations  
394 of the department, revoke or suspend the registration, license or  
395 certification of the accused and require the accused to remove the  
396 mark from the goods or products that are in violation of this act  
397 before sale. The program director or his designee shall render a  
398 written opinion. If either party is aggrieved by the findings of  
399 the program director or his designee, he may appeal to the  
400 commissioner for a full evidentiary hearing. At the hearing  
401 before the commissioner or his designated representative, the  
402 matter shall be heard de novo, the commissioner shall have  
403 subpoena power, the witnesses shall be placed under oath and the  
404 testimony shall be recorded. The commissioner or his designee  
405 shall render a written opinion. If either party is aggrieved by  
406 the findings of the commissioner, he may appeal to the circuit  
407 court of the county of residence of the accused, or, if the  
408 accused is a nonresident of the State of Mississippi, to the  
409 Circuit Court of the First Judicial District of Hinds County,  
410 Mississippi. If either party is aggrieved by the findings of the  
411 circuit court, he may appeal to the Mississippi Supreme Court.  
412 All fees, costs and penalties collected from the accused may be  
413 retained by the department for its operating expenses. The  
414 commissioner may expand and amplify the procedures and other  
415 matters mentioned in this section in such rules and regulations  
416 that the commissioner deems necessary or desirable to carry out  
417 this section.

418 (2) When any violation of this act or rules and regulations  
419 occurs or is about to occur that presents a clear and present  
420 danger to the public health, safety or welfare requiring immediate  
421 action, the commissioner or any designated representative may  
422 issue an order to be effective immediately, before notice and a  
423 hearing that imposes upon the accused a stop sale order, requires  
424 the relabeling of a product, requires the seizure and sale of a

425 product and such other measures as the commissioner deems  
426 necessary under the circumstances. The emergency order shall  
427 contain findings to this effect and the reasons for its entry.  
428 The order shall contain or be accompanied by a notice of  
429 opportunity for hearing which shall provide that a hearing shall  
430 be held if and only if the person subject to the order requests a  
431 hearing within ten (10) days of receipt of the order and notice.  
432 A copy of the order and notice shall be served upon the affected  
433 person by certified mail or by any of the methods set forth in  
434 Rule 4 of the Mississippi Rules of Civil Procedure. Upon a  
435 request for a hearing, a complaint setting forth the charges shall  
436 be served upon the accused, and the procedure outlined in  
437 subsection (1) of this section shall be followed. If it is  
438 determined by the reviewing officer or the commissioner, or his  
439 designee, that the emergency order was erroneously entered, a  
440 remedy shall be fashioned which will make the affected person  
441 whole.

442 SECTION 17. This act shall take effect and be in force from  
443 and after July 1, 2000.